

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Promoting Efficient Use of Spectrum)	WT Docket No. 00-230
Through Elimination of Barriers to the)	
Development of Secondary Markets)	

To: The Commission

REPLY COMMENTS OF NEXTEL PARTNERS, INC.

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SUMMARY

Nextel Partners, Inc. (“Nextel Partners”) supports the Commission in its efforts to remove unnecessary and uneconomic regulatory constraints that hinder the development of secondary markets in spectrum. In doing so, the Commission should rely on market-based decision-making rather than on regulatory initiatives. In particular, the Commission should use caution in imposing any additional regulatory requirements such as information or reporting requirements.

The Commission should take this opportunity to liberalize all of its policies with regard to spectrum transactions – streamlining not only leasing transactions, but also assignments and transfers of control, extending the *de facto* standard to all relevant transactions, and exercising forbearance insofar as possible from individual review and prior approval unless the context clearly requires such scrutiny.

The Commission should not bestow advantages on some classes of carriers such as rural telephone companies, and not others. Such incentives create “favored classes” of market participants that are unwarranted.

Finally, Nextel Partners believes that “opportunistic” radiofrequency devices should only be permitted to utilize licensed spectrum if the licensee decides to enter into a secondary spectrum use agreement that allows such use. The existing licensee is in the best position to determine whether such additional “opportunistic” use of the spectrum is feasible or advantageous in a given situation, location, and time frame.

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Nextel Partners, Inc. ("Nextel Partners"), by its attorneys, hereby submits its Reply Comments in response to initial comments filed in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹

I. INTRODUCTION

Nextel Partners' primary focus is to provide digital wireless mobile communication services in mid-sized and smaller markets, including historically underserved and rural markets throughout the United States. Nextel Partners has grown from its inception in 1999, when Nextel Partners served fewer than 50,000 customers in a small number of markets, and today serves over one million customers in 31 states. Nextel Partners operates more than 3,300 cell sites and its system covers more than 37,000,000 POPs. Through its cooperative arrangements with Nextel Communications,

¹ *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 00-230 (released October 6, 2003) ("*Further Notice*").

Inc. (“Nextel”), Nextel Partners brings to its customers in high cost rural areas and smaller markets the same national network and the same fully integrated four-in-one bundle of services available from Nextel in urban areas. These services include (i) digital cellular, (ii) text/numeric messaging, (iii) Nextel Wireless Web services and (iv) Nextel Direct Connect digital two-way radio in a single phone. Nextel Partners provides these advanced digital wireless communications services over an industry leading 2.5G nationwide network. In addition to serving the residents of rural and secondary market areas, Nextel Partners provides mobile services to travelers in corridors along interstate and state highways.

The unique business relationship between Nextel Partners and Nextel has accelerated the build-out of a seamless, nationwide Nextel compatible network, including a significant presence in secondary and tertiary markets. The cooperation between Nextel Partners and Nextel provides tangible evidence of the potential benefits of reducing the regulatory hurdles to allow companies to maximize the use of their licensed spectrum.

Nextel Partners commends the Commission for the steps it has already taken in this proceeding to remove unnecessary barriers to the development of secondary markets. Nextel Partners encourages the Commission to continue to follow its general policy shift towards greater reliance upon secondary market mechanisms, driven by the marketplace instead of by regulation whenever possible, as an effective means to promote intensive and efficient spectrum utilization.

Nextel Partners believes that the Commission should not impose additional reporting requirements on licenses and should further refrain from prior consent requirements on leases whenever possible. The streamlined transfer of control standard should be extended to all spectrum transactions.

Nextel Partners urges the Commission to apply its policies in an evenhanded fashion, and refrain from adopting rules that favor any category of transaction, type of carrier or market segment. In particular, Nextel Partners opposes the suggestion that the Commission should develop incentives that specifically favor transactions with rural telephone companies.

Finally, the Commission should not create “special rules” for opportunistic radiofrequency devices to operate on licensed spectrum, but should allow the secondary spectrum marketplace to address this issue, and afford existing licensees the flexibility to enter into spectrum sharing agreements with providers utilizing such technology if they so desire.

II. DISCUSSION

A. The Marketplace Should Govern the Development of Secondary Markets

Nextel Partners supports the Commission’s policy to allow the marketplace to govern the development of secondary markets. The Commission specifically requests comments on what steps it should take with regard to “market-makers” for purposes of promoting secondary markets.² Nextel Partners agrees with the parties stating that the

² *Further Notice* at ¶ 226.

Commission should neither attempt to facilitate, nor should it discourage, the development of barter markets or brokers for spectrum lease arrangements.³ Instead, the marketplace itself should govern the development of barter markets, brokers and other mechanisms for the exchange of frequency rights.

Nextel and SBC urge the Commission not to interfere with the development of secondary spectrum markets by presupposing a particular structure for exchanges in the marketplace. SBC explains, “[t]his would only hinder the emergence of efficient market making mechanisms.”⁴ Nextel adds that, “by too purposefully defining the structure of secondary markets and spectrum trading, the Commission may too narrowly define what it means to have a successful spectrum management policy for secondary markets.”⁵ Nextel Partners concurs with these parties that attempts to establish a specific secondary spectrum market mechanism by the Commission could have the unintended adverse effect of constraining market processes, potentially entrenching a system that does not allow the market to optimize its functions. The Commission should instead focus primarily on the elimination of regulations and policies that hinder the development of secondary markets.

Once a robust secondary market for spectrum use rights has developed, the Commission can address issues related to the organization and behavior of market-makers or other facilitators of spectrum transactions if such intervention is warranted at

³ See Nextel Comments at 6; Sprint Comments at 7; SBC Comments at 4-5.

⁴ See SBC Comments at 5.

⁵ See Nextel Comments at 6.

that time. The Commission should not preemptively designate, structure, approve or regulate such entities. Moreover, as other parties have recommended, licensees *should not* be required to provide information to such entities.⁶

B. The Commission Should Take Care Not to Create “Favored Categories” in its Efforts to Deregulate Spectrum Transactions

In deregulating and “streamlining” spectrum transactions, the Commission should be careful not to distort the operation of the newly-created marketplace by imposing special incentives that favor certain categories of carriers or types of transactions over others. In particular, Nextel Partners opposes the suggestions made by the Blooston Law Firm aimed at favoring rural telephone companies by giving preferential treatment to licensees that enter into rural partitioning agreements or long-term leases with rural telephone companies.⁷ Nextel Partners believes that the Commission should structure and apply its policies in an evenhanded fashion, and should not favor existing rural telephone companies over other providers of rural service. Instead, the Commission should allow the marketplace to find the most efficient uses for, and users of, spectrum. At this point, the imposition of additional “incentives” that would result in creation of an uneven “playing field” for market participants is at best premature.

C. The Commission Should Not Adopt New Information or Reporting Requirements

In the *Further Notice*, the Commission sought comment on whether and to what extent it should adopt new information gathering requirements to facilitate the

⁶ See PCIA Comments at 6-7.

⁷ See Blooston Comments at 5-8.

development of secondary markets in spectrum.⁸ Nextel Partners agrees with the majority of commenters who responded that the Commission should, insofar as is possible, avoid imposing additional information reporting requirements on licensees to facilitate development of secondary markets.⁹ Instead of preemptively attempting to determine whether any additional information reporting requirements might become necessary due to the failure of market response, the Commission should focus its efforts on ensuring complete, timely and reliable public access to all of the information that is *already* reported (and *will be* reported, in the case of leasing agreements).¹⁰

The Commission should allow the market itself to determine whether any additional information is required to facilitate secondary markets and should give the marketplace an opportunity to develop appropriate mechanisms for allowing the communication of such information, *before* attempting to develop and impose any new reporting requirements. This will require some degree of patience and forbearance on the Commission's part, permitting the market to establish itself, and institute operational

⁸ *Further Notice* at ¶ 226.

⁹ *See, e.g.*, Nextel Communications, Inc. ("Nextel") Comments at 4; SBC Communications Inc. ("SBC") Comments at 2; PCIA Comments at 4; Verizon Wireless ("Verizon") Comments at 2; AT&T Wireless Services, Inc. ("AT&T") Comments at 2; Sprint Corporation ("Sprint") Comments at 6; Cingular Wireless LLC ("Cingular") Comments at 15; Cellular Telecommunications & Internet Association ("CTIA") Comments at 6.

¹⁰ Wireless Communications Association International, Inc. ("WCAI") Comments at 10-11; Nextel Comments at 3; SBC Comments at 3-4; Verizon Comments at 2 ("[W]ith its new rules permitting spectrum leasing, the volume of information about transactions is likely to increase substantially. It is critical that the Commission be prepared to manage the increased inflow of information and make it publicly available on a real-time basis.")

changes that can only come with the passage of time and experience in the modified regulatory and business environment.

The imposition of additional information and reporting requirements by the Commission that are not the result of actual marketplace experience may stifle secondary markets by unnecessarily raising compliance costs. Reporting requirements can also have the effect of deterring commerce to the extent that they require companies to submit competitively sensitive information that is not generally available to the public.¹¹

Nextel Partners agrees with the Commission's tentative conclusion that the private sector is better equipped to determine what additional types of information parties may require and how to provide that information in a form readily available to interested market participants. The Commission already collects certain basic information regarding spectrum licenses such as the names or licensees and the geographic areas and frequency bands for which they hold their authorizations.¹² Given timely and accurate access to this information, potential lessees can easily use the Commission's online ULS database to locate potential lessors. The marketplace itself can better determine whether any additional information is in fact needed to produce market efficiencies.

¹¹ See SBC Comments at 3; Sprint Comments at 6; Nextel Comments at 3-4; Cingular Comments at 15.

¹² *Further Notice* at ¶ 224.

D. The Commission Should Employ a Notification Process Instead of Requiring Prior Approval for Spectrum Exchanges That Involve a *De Facto* Transfer of Control

Nextel Partners agrees with Nextel that the Commission should use “a notification process rather than a prior approval process for leasing transactions that involve a transfer of *de facto* control as the Commission has defined that particular form of lease arrangement.”¹³ Nextel Partners generally supports the liberalization of *de facto* transfers of control in leasing arrangements, as proposed by the Commission,¹⁴ and urges the Commission to forbear from prior consent requirements wherever possible.¹⁵ Nextel Partners agrees with SBC’s observation that, “implementing these [forbearance] proposals would make the spectrum marketplace more efficient by reducing delay and decreasing transaction costs.”¹⁶ Nextel Partners agrees with both AT&T’s and Nextel’s recommendations that the Commission should apply the same notification requirements to both short and long term leases.¹⁷

Nextel Partners also believes that the Commission should extend forbearance from individual review to include transactions involving “mixed services.” As Nextel explains in its Comments, “[c]onvergence in today’s marketplace and the multitude of diverse entities offering a variety of services makes it more likely than not that Section 10 [telecommunications service] forbearance would be unavailable for many publicly

¹³ See Nextel Comments at 7.

¹⁴ *Further Notice* at ¶ 246.

¹⁵ See PCIA Comments at 5; Nextel Comments at 7; WCAI Comments at 11-12.

¹⁶ See SBC Comments at 7-8.

¹⁷ See Nextel Comments at 7.

beneficial arrangements.”¹⁸ In order to facilitate these types of beneficial arrangements, the Commission should do what it can to forbear from requiring prior approval or create a streamlined process that is available when Section 10 forbearance may not apply.

E. Streamlined Transfer of Control Standards Should Be Extended to All Spectrum Transactions

In the *Further Notice*, the Commission asks if it should apply the new *de facto* control standard to regulatory contexts other than leasing.¹⁹ Nextel Partners encourages the Commission to extend the new streamlined transfer of control standards to *all* spectrum transactions, including, but not limited to, license assignments, stock transfers, and management agreements. As CTIA states, “the Commission should exercise forbearance with regard to certain transfers and assignments in order to avoid market distortions favoring spectrum leases and promote efficient secondary markets.”²⁰ The policy objectives of regulating transfers of control in the case of these spectrum transactions are no different than the same objectives that apply in a leasing context.

F. Third-Parties Utilizing New Technologies Should Access Spectrum Through A Secondary Markets Approach, Rather Than Through An Unlicensed “Underlay” Approach

In response to the recommendation of the *Spectrum Policy Task Force Report*, the Commission sought comment on policies regarding access to spectrum by “opportunistic” radiofrequency devices in currently-licensed spectrum bands.²¹ The Task

¹⁸ See Nextel Comments at 8.

¹⁹ See *Further Notice* at ¶ 316.

²⁰ See CTIA Comments at 3.

²¹ *Further Notice* at ¶ 234.

Force suggested that the Commission should “focus on advancing and improving a secondary markets approach to access to spectrum by opportunistic devices during the near term.”²²

Nextel Partners opposes the unlicensed use of licensed spectrum outside a specific agreement with the existing licensee. The Commission should not adopt “special rules” to allow opportunistic devices to operate on spectrum in currently licensed bands. Permitting opportunistic devices to use “temporarily unused” spectrum not only creates the potential for interference, but also undermines the secondary market for spectrum use that is being encouraged in this rulemaking.²³ Because opportunistic devices pose a clear risk of interference to services offered over licensed spectrum, existing licensees should have the right to determine, in their sole discretion, whether they are willing to risk potential disruption to their own use of spectrum by entering into agreements with third parties. The Commission should allow existing licensees to determine the types of transactions and uses that create the greatest value for their licensed spectrum.

²² *Id.*

²³ See SBC Comments at 6-7, Cingular Comments at 9; WCAI Comments at 9; Verizon Comments at 4.

CONCLUSION

In view of the foregoing, Nextel Partners respectfully requests that the Commission take action consistent with the views expressed herein.

Respectfully submitted,

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